

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

EUGENIO VARGAS,	§	
	§	
	§	
Plaintiff/Counterclaim Defendant,	§	Civil Action No. 4:22-cv-430-Y
	§	
v.	§	Judge Terry R. Means
	§	
ASSOCIATION OF PROFESSIONAL	§	
FLIGHT ATTENDANTS, <i>et al.</i> ,	§	
	§	
Defendants/Counterclaim Plaintiff.	§	

**APFA DEFENDANTS’ MOTION  
FOR LEAVE TO AMEND ANSWER AND COUNTERCLAIM**

Pursuant to Rule 15, Fed. R. Civ. P., and this Court’s Initial Scheduling Order (doc. 77), Defendants the Association of Professional Flight Attendants (“APFA”), Julie Hedrick and Erik Harris (herein, “the APFA Defendants”) hereby move to leave to amend their Answer and the APFA’s Counterclaim. The proposed Amended Answer and Counterclaim is attached hereto as Exhibit A.

Counsel for APFA has conferred with counsel for Plaintiff, who states that Plaintiff opposes this motion.

The purpose of the proposed amendment is to reflect, in the Amended Answer, the facts as currently understood regarding Plaintiff’s allegations; to update the affirmative defenses; and to amend the counterclaims by withdrawing one cause of action (the contract claim under 29 U.S.C. § 185(a)), and refining the allegations of the remaining counterclaim (the fiduciary duty claim under 29 U.S.C. § 501). The gravamen of the fiduciary duty counterclaim remains the same. The APFA Defendants respectfully submit that the proposed amendment will not cause

any delay or undue prejudice to any party, and that the motion for leave to amend should therefore be granted.

Rule 15 provides that “The court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). As further articulated by the Fifth Circuit:

“Whether leave to amend should be granted is entrusted to the sound discretion of the district court, and that court's ruling is reversible only for an abuse of discretion.” *Heinze v. Tesco Corp.*, 971 F.3d 475, 485 (5th Cir. 2020) (quoting *Pervasive Software Inc. v. Lexware GmbH*, 688 F.3d 214, 232 (5th Cir. 2012)). But a district court may only deny leave “for a substantial reason, such as undue delay, repeated failures to cure deficiencies, undue prejudice, or futility.” *Stevens v. St. Tammany Par. Gov't*, 17 F.4th 563, 575 (5th Cir. 2021) (quoting *U.S. ex rel. Spicer v. Westbrook*, 751 F.3d 354, 367 (5th Cir. 2014)). Absent such factors, leave to amend should be “freely given.” Fed. R. Civ. P. 15(a).

*Residents of Gordon Plaza, Inc. v. Cantrell*, 25 F.4th 288, 302–03 (5th Cir. 2022), *cert. denied*, 143 S. Ct. 100 (2022).

The APFA Defendants’ Proposed Amended Answer and Counterclaim readily meets this standard. There is no delay, because the present motion is filed within the deadline established by the Court in its Scheduling Order. There have been no prior failures to cure deficiencies in the pleadings. Nor would amendment prejudice Plaintiff in any way -- the proposed amended pleading would narrow the issues and streamline the litigation by removing one cause of action while retaining another which has been present since the case began. Finally, amendment would not be futile -- the remaining counterclaim for breach of fiduciary duty arises under Section 501 of the LMRDA, 29 U.S.C. § 501, and this Court has already rejected Plaintiff’s effort to dismiss that counterclaim, *see* Order Partially Granting Motion to Dismiss Counterclaim (doc. 70 at 2-4).

Accordingly, the APFA Defendants respectfully request that the Court grant their motion for leave to amend their Answer and Counterclaim.

Dated:

Respectfully Submitted,

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**CERTIFICATE OF CONFERENCE**

I certify that on August 30, 2023, counsel for the APFA Defendants conferred with Kerri Phillips, counsel for Plaintiff, by email regarding this motion. Ms. Phillips stated that Plaintiff opposes this motion.

/s/ Jeffrey A. Bartos  
JEFFREY A. BARTOS

**CERTIFICATE OF SERVICE**

I certify that on Wednesday, August 30, 2023, I electronically submitted this document to the clerk of the court for the U.S. District for the Northern District of Texas using the court's electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to the following individuals, who have consented to accept this Notices as service of this document by electronic means:

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/s/ James D. Sanford  
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